

**REMARKS**

Claims 33-64 are pending. The applicants respectfully request reconsideration and allowance of this application in view of the above amendments and the following remarks.

**Rejection Under 35 USC 103(a)**

On page 18 of the office action, claims 33-64 were rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,952,680, Melby et al. ("Melby") in view of U.S. Patent No. 5,646,844, Gudat et al. ("Gudat"). The applicants respectfully request that this rejection be withdrawn for the following reasons.

The independent claims have been amended to clarify that amended to clarify that the work machines are "construction machines engaged in construction work," that the leader machine is one of the "construction machines engaged in construction work," and that "the at least one leader machine manages itself and the other work machines according to the management information." In combination with the limitation that "only said at least one leader work machine transmitting work instructions ...", this point clarifies that the leader work machine is a construction machine actually performing construction, rather than some other type of "work machine" as broadly construed. Support for the amendment is located in, for example, paragraphs [0002], [0066], and [0667].

Consequently, the plurality of work machines (including the leader work machine) can be managed by the operator of the leader work machine. In comparison with conventional systems, it is not necessary to include a overseeing manager in addition to the work machine operators, whereby the manager collects construction machine information and issues directions to the construction machines, thereby reducing personnel costs (see page 15, line 21 to page 22, line 17). That is, that the operator of the lead work machine can manage the other work machines, in

comparison to the prior art which requires various supervisors to be overseeing the construction site and thus cannot be performing construction.

The amended independent claims also recite that the leader work machine transmits work instructions to the other work machines “responsive to said transmitted management information,” to clarify that the relationship between the work instructions and the management information.

In comparison to Melby, according to the independent claims “the work machines are construction machines engaged in construction work.” In Melby, the work machines are fork lifts. Fork lifts are not generally considered to be “construction machines engaged in construction work.” Melby is directed to the problem of maintenance of assets. (Col. 1, lines 16-24.) In contrast, one of the problems aimed at here is to reduce the on-site personnel which are ordinarily required for supervising construction. (See, e.g., page 15, line 21 through page 22, line 22.)

In comparison to Melby, according to the independent claims, only the leader machine transmits work instructions to other work machines, “responsive to receipt of said transmitted management information.” According to the claims, “the at least one leader machine is one of the work machines being construction machines engaged in construction work, wherein the at least one leader machine manages itself and the other work machines according to the management information.” Significantly, none of Melby’s forklifts transmits work instructions to the other work machines. Furthermore, none of Melby’s forklifts manages the other forklifts and itself as well. To the contrary, Melby’s forklifts are provided with a transmitter (33) “for transmitting the acquired data from the data acquisition device 32 to the remote analysis system 50 for analysis.” (Col. 7, lines 5-8.) The office action hypothesizes that in Melby FIG. 3, the reports are transmitted over the Internet and then to other forklifts. However, Melby only

discloses “transmitting” data from forklifts – not receiving. That is, Melby’s forklifts are not equipped to receive transmissions from other forklifts. More particularly, Melby’s leader forklift does not receive the work machine information and transmit work instructions to the other forklifts “through the first communications means” (keeping in mind that the first communication means is “facilitating reciprocal communications directly between said plurality of work machines”). Accordingly, the independent claims are believed to be patentable over the combination of cited references.

Furthermore, Melby was filed on 31 October 2000, whereas the earliest priority date of the present application is October 12, 2000. Accordingly, Melby is not prior art.

Hence, Melby and Gudat, alone or in combination, fail to teach or suggest the combination of features recited in the independent claims, when considered as a whole.

With respect to the rejected dependent claims, applicants respectfully submit that these claims are allowable not only by virtue of their dependency from the independent claims, but also because of additional features they recite in combination.

Applicants respectfully submit that, as described above, the cited art does not show or suggest the combination of features recited in the claims. Applicants do not concede that the cited art shows any of the elements recited in the claims. However, applicants have provided specific examples of elements in the claims that are clearly not present in the cited art.

#### Response to Official Notice

On page 17-18 of the office action, the office action responds to applicants’ traversal of the Official Notice that “it is old and well known in the art to distribute information only to leaders, who in turn propagate said distributed information to subordinates as necessary.” On page 18, the office action cites Wolstenholme’s nuclear, biological or chemical and enemy threat alarm system and Gibson’s organizational communication. These references are not in a field

related to construction machines and construction project management. It is respectfully submitted that Wolstenholme's nuclear, biological or chemical and enemy threat alarm system is subject to different problems than are relevant in the field of endeavor dealing with managing construction sites which deal with construction machines. It is also respectfully submitted that Gibson's official memos, policy statements, manual, etc. are not directed to the problems found in on-the-site management of construction machines. Because Gibson and Wolstenholme are in different fields of endeavor and are not pertinent to the particular problem in this application, Gibson and Wolstenholme are improper references under 35 USC 103(a). Accordingly, it is respectfully submitted the rejections under 35 USC 103(a) must be withdrawn, and the traversal of the taking of official notice is maintained. The examiner is respectfully requested to cite a proper reference or provide an appropriate declaration if this official notice is maintained.

Even more particularly, the taking of notice has nothing to do with a "leader machine", and the references support that the official notice of the "leader" has nothing to do with a "leader machine." Thus the scope of the notice appears to be limited to the specific people and threat alarm systems discussed in the notices. Specifically, the applicants affirmatively state that **it is not known** for leader work machines to distribute information to other work machines in the field of construction. The only reason for the examiner to propose such a modification is based upon the present specification. To do so would be improper use of hindsight.

The examiner continues to attempt to take official notice that "it is old and well known in the art to notify relevant parties of the status and availability (or unavailability) of a work machine at a site" (office action, page 12). The taking of official notice is again respectfully traversed. The examiner's statement on the record is entirely too broad, since it does not limit who the "relevant" parties are. Is the entire world notified? Which parties are selected to be notified? How is "relevant" defined? It is respectfully submitted that the entire world is not

notified of the status of a work machine, and indeed, Melby does not notify other fork lifts of a fork lift status. Accordingly, the examiner's official notice must be withdrawn or significantly modified. The examiner is respectfully requested to cite a proper reference or provide an appropriate declaration if this official notice is maintained.

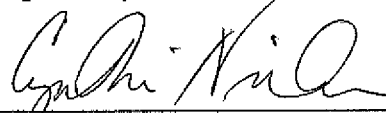
Furthermore, the applicants repeat herein and incorporate by reference the traversal of the official notice as set out more fully in applicants' prior response.

Finally, it appears that the examiner believes that the mere setting of facts into the written record constitutes adequate due process. To the contrary, procedural due process requires that administrative actions be based on substantial evidence. Official Notice statements do not provide substantial evidence. The extensive reliance on Official Notice in the present application constitutes a denial of procedural due process in the present application. The examiner is urged to withdraw the statements of official notice and let the references of record speak for themselves.

In view of the foregoing, the applicants submit that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions arise, the examiner is invited to contact the undersigned by telephone.

If there are any problems with the payment of fees, please charge any underpayments and credit any overpayments to Deposit Account No. 50-1147.

Respectfully submitted,



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